

**IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT**

United States Court of Appeals
Fifth Circuit

FILED
July 28, 2009

No. 08-41030
Summary Calendar

Charles R. Fulbruge III
Clerk

UNITED STATES OF AMERICA

Plaintiff-Appellee

v.

MICHAEL T. GRUBERT

Defendant-Appellant

Appeal from the United States District Court
for the Southern District of Texas
USDC No. 6:08-CR-7-ALL

Before SMITH, STEWART and SOUTHWICK, Circuit Judges.

PER CURIAM:*

Michael T. Grubert pleaded guilty to possession of child pornography and was sentenced to a 90-month term of imprisonment and to a 10-year period of supervised release. As a special condition of his supervision, Grubert was ordered to “participate in a mental health program as deemed necessary and approved by the probation officer.”

* Pursuant to 5TH CIR. R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR. R. 47.5.4.

Grubert argues that the district court committed plain error by delegating to the probation officer the authority to decide whether he should undergo mental health treatment. Citing *United States v. Albro*, 32 F.3d 173, 174 (5th Cir. 1994), he argues that the district court impermissibly delegated its Article III power to impose conditions of supervised release by giving the probation officer discretion to decide whether he should participate in a mental health program.

To show plain error, Grubert must show an error that is clear or obvious and that affects his substantial rights. *United States v. Baker*, 538 F.3d 324, 332 (5th Cir. 2008), *cert. denied*, 129 S. Ct. 962 (2009). Our precedents do not plainly require the result Gruber urges. *See United States v. Vega*, 332 F.3d 849, 851-54 (5th Cir. 2003); *United States v. Warden*, 291 F.3d 363, 365-66 (5th Cir. 2002). The judgment is

AFFIRMED.